

LOWELL M. PAIGE

IBLA 80-908

Decided January 16, 1981

Appeal from decision of Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void. M MC 46867 through 46873.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, or prior to Dec. 31 of each year following the calendar year in which the claim was recorded with BLM. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Lowell M. Paige, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lowell M. Paige appeals the decision of the Montana State Office, Bureau of Land Management, dated July 28, 1980, which declared certain

quartz lode mining claims 1/ abandoned and void because no evidence of annual assessment work or notice of intention to hold had been filed with BLM on or before October 22, 1979, as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976). The mining claims had been located in 1919, 1923, or 1930. Copies of the location notices had been filed with BLM October 18, 1979, but the evidence of assessment work for the year ending September 1, 1979, was not submitted to BLM until January 3, 1980.

Appellant states that he did not receive any information as to the serial numbers assigned to his claims until December 12, 1979, so that it was impossible for him to file, on or before October 22, 1979, a notice of intention to hold. He had filed his affidavit of annual assessment work with the Clerk and Recorder of Madison County, Montana, on December 31, 1979, and on the same day, mailed a copy of the recorded affidavit to BLM.

The statute provides:

#### RECORDATION OF MINING CLAIMS AND ABANDONMENT

Section 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment

<u>1/ Claim Name</u>	<u>Serial Number</u>	<u>Location Date</u>	<u>Recordation</u>
Climax Extension	M MC 46867	11/14/1919	10/18/79
Mutt and Jeff	M MC 46868	7/13/1923	"
West Gate	M MC 46869	7/13/1923	"
Golden Rule	M MC 46870	7/15/1923	"
Free Gold	M MC 46871	8/21/1930	"
Little Midas	M MC 46872	8/21/1930	"
Reupona	M MC 46873	8/21/1930	"

work), an affidavit of assessment work performed thereon, o[r] a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

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(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

[1] Under the express terms of 43 CFR 3833.2-1(a),

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording [i.e., recordation with BLM of a copy of the original notice of location], which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Appellant recorded the copy of the original notice of location with BLM in calendar year 1979. Thus, he was required to file, on or before October 22, 1979, evidence of his annual assessment work completed during the assessment year ending on August 31, 1979, as the October date is "sooner" than December 30 of 1980, the calendar year following the year in which he filed the copy of the original notice of location with BLM.

Appellant did not file his proof of assessment work for 1979 until January 3, 1980, more than 10 weeks after the October 22, 1979, deadline. Accordingly, BLM properly declared his claims to be abandoned and void. 43 CFR 3833.4.

Appellant argues that he did not receive the identifying serial numbers for his mining claims until December 12, 1979. Appellant could have filed his proof of assessment work with the copy of the location notice, so that the subsequent identifying serial number would not have been necessary. The delay by BLM in informing him of the identifying numbers is irrelevant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

